



# Scott Newcomer

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STATE REPRESENTATIVE • 33rd ASSEMBLY DISTRICT

**Assembly Committee on Health & Healthcare Reform**  
**Testimony in Support of Assembly Bill 863**  
**Representative Scott Newcomer, Author**  
**March 4, 2008**

Chairperson Vukmir and members of the Assembly Committee on Health and Healthcare Reform, thank you for allowing me this opportunity to testify on behalf of Assembly Bill 863, also known as the Health Care Quality Improvement Act.

The health care system relies on robust quality improvement activities and a strong regulatory system to improve patient safety and advance the quality of health care in Wisconsin. Health care providers, however, are reluctant to participate in these activities because the information they provide might be used in a civil or criminal action against the provider. Assembly Bill 863 would encourage quality improvement activities, including more public reporting of health care quality and safety measures, and preserve our regulatory system by providing specific protections against the use of quality improvement information. This bill WILL NOT prevent a plaintiff from conducting an investigation in a civil proceeding or stop law enforcement from interviewing people or obtaining original records in a criminal proceeding.

The current criminal statute concerning patient care is ambiguous and potentially broad. Recent prosecutorial decisions not only jeopardize participation in quality improvement activities, but also discourage people from pursuing health care careers. A.B. 863 would reserve criminal charges for medical errors that are particularly grievous acts, while maintaining Wisconsin's strong regulatory oversight and penalty system that can result in loss of livelihood, license, and civil/medical malpractice liability, and other serious penalties. Assembly Amendment 1 to AB 863 simply makes the abuse and neglect criminal statutory provisions contained within the bill more consistent with the existing abuse and neglect regulations administered by the Department of Health & Family Services' mandatory reporting requirements.

Assembly Bill 863 has the strong support of 35 health care-related organizations, including the Wisconsin Hospital Association, the Wisconsin Nurses Association and the Wisconsin Federation of Nurses and Health Professionals. Representatives from the Wisconsin Hospital Association are here today to testify in support of A.B. 863 and stand ready to address any questions you may have.

Once again, thank you for your time.



## MARSHFIELD CLINIC®

**TO:** Members of the Assembly Committee on Health and Healthcare Reform

**FROM:** Nate Elias, Director of Government Relations  
Dr. Bob Phillips, Medical Director of Government Relations

**RE:** AB 863 – “Quality Improvement Act”

**DATE:** March 4, 2008

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You currently have before you for consideration **AB 863** regarding “confidentiality of health care services reviews...” also known as *The Quality Improvement Act*.

Marshfield Clinic urges you to *support AB 863*.

The *Quality Improvement Act* addresses, amongst other issues, health care organizations’ concerns about sharing trended quality improvement data within and amongst health care organizations. Current peer review statutes and subsequent case law has impacted original statutes such that quality improvement activity is not protected from legal discovery, which interferes with health care organizations in Wisconsin’s ability to continue needed quality improvements for patient care and safety.

In a time when both the Legislature and the public are demanding more transparency and disclosure within the health care field, as well as everyone’s desire to continue to advance quality, safety and accessibility in the health care industry in Wisconsin, removing barriers to sharing of information and data which contributes to these priorities is in everyone’s best interests.

There has been a tremendous amount of thoughtful consideration put into the re-write of this legislation to address concerns with prior versions of this concept from last session and we are hopeful this important legislation is allowed the opportunity for timely consideration at all levels of the legislative process in both houses.

Thank you in advance for your consideration of this important legislation. Please do not hesitate to contact me or Dr. Bob Phillips should you have any further questions about the legislation or Marshfield Clinic’s support of it.



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TO: Representative Leah Vukmir, Chairperson, and Other Members of the Assembly Health and Healthcare Reform Committee  
FROM: Gina Dennik-Champion MSN, RN, MSHA  
WNA Executive Director  
DATE: March 4, 2008  
RE: Testimony in Support for AB 863

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Good morning Chairperson Vukmir and members of the Assembly Health and Healthcare Reform Committee. My name is Gina Dennik-Champion I am a registered nurse and the Executive Director of the Wisconsin Nurses Association (WNA). I am here today representing WNA which is the association for all professional nurses in Wisconsin.

I want to express sincere thanks to Representative Newcomer for authoring AB 863 and to you Representative Vukmir for holding this hearing. AB 863 is the piece of legislation that the 90,000 RNs and LPNs in Wisconsin have been waiting for.

The Wisconsin Department of Justice recent decision to charge registered nurses and other health care professionals who commit unintentional medical errors, with violation of Wisconsin's Medicaid Fraud Statutes, sec. 940.295(3), which reads: "recklessly abuses or recklessly neglects a patient". The injury or death of a patient at the hands of a health care worker calls for review and action. WNA agrees that acts by health care providers that are intended to cause harm to patients and acts that, despite the known risks to the patient, demonstrate a conscious disregard for the health, safety or welfare of patients fall within the realm of the criminal justice system. However, not every case in which a patient is injured or dies is a crime. Such is the case when there is an unintentional medical error.

The criminal justice and regulatory systems provide a continuum of options for protection to patients in health care settings. Without the presence of aggravating factors, it should not be used to prosecute individuals for acts of simple negligence; isolated, unintended acts of failing to follow protocol; or single acts of malpractice. Those acts fall appropriately within the jurisdiction of the regulatory oversight agencies like the Department of Health and Family Services, Division of Quality Assurance and Department of Regulation and Licensing, Board of Nursing. There is also the civil court system that can be utilized to pursue action.

One goal of criminal prosecution is to provide specific deterrence to the individual who committed the act. Another goal is to generally deter others from committing the same or similar acts. It is important to bring criminal charges when the conduct calls for the most serious consequences. A criminal record and the loss of liberty upon conviction are significant consequences for anyone. Criminal charges should not be brought when a person simply, unintentionally and mistakenly fails to follow protocol, even when the result is the death of a patient.

Hospitals, skilled nursing facilities, and other health care entities across the country clearly are in need of qualified nurses. According to the Institute of Medicine (IOM) Report of 2004, nurses intercept 86 per cent of all potential medical errors. This demand for safe and competent practice contributes to a work environment for nurses that are physically and emotionally stressful. Ineffective work processes, less than desirable medical equipment, patient acuity and nurse fatigue are all factors contributing to the nursing shortage. Bringing criminal charges against one otherwise good registered nurse who happened to make a mistake is one more discouraging factor in either entering or remaining in the profession.

Bringing criminal charges for violations of protocol; well-intended, but mistaken judgment; or single, simple acts of malpractice has had a chilling effect on Wisconsin's nursing workforce. If this continues RNs and other health care providers will cease from openly and fully disclosing and examining the root causes of incidents for fear of criminal prosecution. WNA supports the adoption and an ongoing philosophy of a culture of safety as recommended by the Institute of Medicine, *Keeping Patients Safe: Transforming the Work Environment of Nurses (2004)*. In order to accomplish this, health care systems need to have good quality assurance and assessment systems that systematically evaluate all accidents and incidents, recognize emerging risks, trends and patterns, encourage full and frank disclosure and promote self-reflection without fear of prosecution. Without the ability to examine and respond to mistakes, malfunctions or errors in judgment, we all are placed at risk.

Death or serious injury to a patient due to an unintentional medical error will continue to be an RN's worse nightmare. As RNs we have a Code of Ethics that drives our practice and includes "Do No Harm". When something goes terribly wrong with her patient and if it is the result of an unintentional error the net effect on the RN is one of devastation, remorse and guilt. RNs need to share the details of the unintentional medical error with the appropriate quality assurance and peer review members of her organization. But given the current interpretation of the law that allows for criminal prosecution, WNA along with other health care organizations is advising nurses not disclose information regarding the error but rather procure a personal criminal defense attorney so as to avoid self-incrimination.

AB 863 provides the legislative fix that is needed to address these important concerns that nurses are facing today. AB 863 restores the trust that is necessary for an effective culture of patient safety within our health care settings. These statutes involve redefining and re-clarifying non-criminal conduct and criminal conduct. AB 863 establishes the safeguards necessary for facility quality improvement programs and practices in regards to investigations and summaries along with access of information collected by regulatory agencies.

As nurses we do not want to be perceived as wanting "blanket immunity" for all nursing actions. We have all heard about those bad actors who for whatever reason want to intentionally cause harm, injury or death to a patient. This legislative strategy will not exempt those individuals. This legislative strategy is about assisting RNs and other health care providers to feel comfortable and assured that the information provided regarding a medical error or near miss will be accepted and framed within a "best-practice" patient safety environment and in the absence of criminal prosecution.

WNA respectfully requests your support of AB 863 and that your vote AB 863 out of committee. AB 863 is good for nurses and good for patients.

I thank you again for allowing me the opportunity to present WNA's viewpoint on this issue and will be happy to answer any questions you may have.